

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MARION JOHNSON)

For Appellant: Marion Johnson, in **pro. per.**

For Respondent: Bruce W. Walker
Chief Counsel

Jon Jensen
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Marion Johnson against a proposed assessment of additional personal income tax in the amount of \$387.66 for the year 1974.

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On her 1974 California personal income tax return **appellant** claimed deductions for the following four items: interest expenses totaling \$2,408; taxes in the amount of \$2,220; a casualty loss of \$350; and employment education expense of \$750. **Appellant's** corresponding deductions on her 1974 federal return were essentially the same. The only differences were a \$571 increase in the deduction of taxes to account for state income taxes paid and a characterization of the employment education expense as travel expense.

Appellant's federal return was audited by the Internal Revenue Service which resulted in disallowance of the following deductions: \$1,958 of the interest expense; \$1,496 of the taxes; and the entire amount of the casualty loss and the travel expense. Appellant did not challenge the federal determination.

After receiving a copy of the federal audit report from the **Internal Revenue Service**, respondent determined that the relevant provisions of California law -pertaining to the disallowed deductions were **essentially** the same as those of the federal law. Accordingly, respondent issued a notice of proposed assessment disallowing **appellant's** deductions to the same extent-that they were disallowed by the federal action. Appellant's protest was denied and this appeal followed.

Section 18451 of the Revenue and Taxation Code provides, in part, that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. It is well settled that a determination by the Franchise Tax Board based upon a federal audit is presumed to be correct and the burden is on the taxpayer to overcome that presumption. (Todd v. McColgan, 89 Cal. App. 2d 509 [201 P.2d 414] (1949); Appeal of Willard D. and Esther J. Schoellerman, Cal. St. Bd. of Equal., Sept. 17, 1973; Appeal of Joseph B. and Cora Morris, Cal. St. Bd. of Equal., Dec. 13, 1971.) Here, appellant has acquiesced in the federal audit report and has failed to offer any evidence to suggest that the federal determination was erroneous.

Appellant's only argument is that her California income tax liability should not be controlled by the federal action since California was not a party to the federal agreement and because she agreed to the federal determination solely for reasons of expediency. Appellant has misinterpreted respondent's position. Appellant is not bound here by the federal determination. Respondent's determination, based upon a federal audit report,

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is presumptively correct. While appellant has the burden to overcome that presumption, she also has the opportunity to show **that** the federal determination was incorrect.

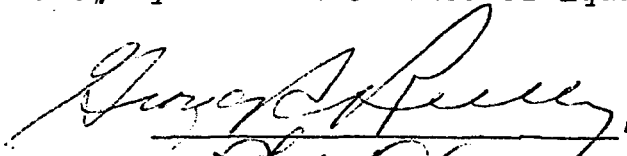
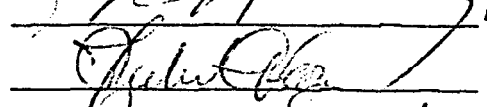
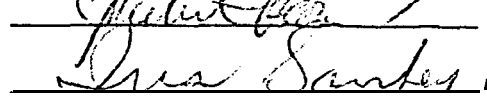
(Rev. & Tax. Code, § 18451.) However, since appellant has presented no evidence tending to show that the federal determination was erroneous despite the opportunity to do **so**, respondent's action must be sustained.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to **section** 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Marion Johnson against a proposed assessment of additional personal income tax in the amount of \$387.66 for the year 1974, be and the same is hereby sustained.

Done at Sacramento, California, this 5th day of **December**, 1978, by the State Board of **Equalization**.

 _____, Chairman
 _____, Member
 _____, Member-
_____, Member
_____, Member